

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEFFREY KENGERSKI,

Civil Action No. 17-1048

Plaintiff,

v.

Judge Nicholas Ranjan

COUNTY OF ALLEGHENY,

Defendant.

JURY TRIAL DEMANDED

JOINT EXHIBIT LIST

Ex. No.	P/D/Joint Exhibit	Date	Author	Descript.	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
1	D	2002-05-06	Kengerski	Acknowledgement of Receipt of AC Code of Accountability, Conduct, and Ethics	Δ AC-JK_000685			401, 403 – receipt of documents not relevant, potentially confusing without actual document	Relevant to show π's receipt and understanding of the COC and supports Δ's legitimate non-retaliatory reasons for termination: -	Sustained pursuant to Court's Order on Plaintiff's motion <i>in limine</i> re acknowledgment sheets and corresponding brief.
2	P	2003 2007 2013	Various Kengerski Supervisors; Latest is Capt. McGovern	Kengerski's performance evaluations going back to his time as a Part-Time C/O	Δ AC-JK_000051 - 000055, 60-65, 68-69			Obj. 401, 403 2003 and 2007 Evaluations conducted under different administration; π was only a CO and sergeant at time of evaluations (not Captain)	Records of P's satisfactory job performance are relevant to his claims that defendant's reasons for terminating him were pretextual	Objection is sustained.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
3	Joint	2005-10-30	AC Record	Kengerski Promotion: Part-Time to Full-Time C/O	Δ AC-JK_000097					
4	D	2005-10-31 (undated)	Kengerski	Acknowledgement of Receipt of AC Handbook	Δ AC-JK_000657			401, 403 – receipt of documents not relevant, potentially confusing without actual document.	Relevant to show π's receipt and understanding of the handbook and supports Δ's legitimate non-retaliatory reasons for termination:	Sustained pursuant to Court's Order on Plaintiff's motion <i>in limine</i> re acknowledgment sheets and corresponding brief.
5	D	2005-10-31	Kengerski	Acknowledgement of Receipt of AC Code of Accountability, Conduct, and Ethics	Δ AC-JK_000676			401, 403 – receipt of documents not relevant, potentially confusing without actual document.	Relevant to show π's receipt and understanding of the COC and supports Δ's legitimate non-retaliatory reasons for termination: -	Sustained pursuant to Court's Order on Plaintiff's motion <i>in limine</i> re acknowledgment sheets and corresponding brief.

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6	D	2005-10-31	Kengerski	Acknowledgement of Receipt of ADHR Policy and Report Procedure	Δ AC-JK_000677			401, 403 – receipt of documents not relevant, potentially confusing without actual document.	Relevant to show π's receipt and understanding of the Policy and supports Δ's legitimate non-retaliatory reasons for termination: -	Sustained pursuant to Court's Order on Plaintiff's motion <i>in limine</i> re acknowledgment sheets and corresponding brief.
7	D	2005-11-21	Kengerski	Acknowledgement of Receipt of ADHR Policy and Report Procedure	Δ AC-JK_000066			401, 403 – receipt of documents not relevant, potentially confusing without actual document.	Relevant to show π's receipt and understanding of the Policy and supports Δ's legitimate non-retaliatory reasons for termination: -	Sustained pursuant to Court's Order on Plaintiff's motion <i>in limine</i> re acknowledgment sheets and corresponding brief.
8	Joint	2007-04-29	AC Record	Kengerski Promotion: C/O to Sergeant	Δ AC-JK_000094					
9	D	2008-01-01	AC Policy	Allegheny County Employee Handbook	Δ AC-JK_000422 - 000470					
10	Joint	2008-02-20	Ramon Rustin	ACJ Code of Ethics Policy 124	Δ AC-JK_000168 - 000178					

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11	D	2008-06-23	Lance Bohn	Verbal Warning to Kengerski for Failing to Report Incident	Δ AC-JK_000389			401, 403 – if Ex. 2 is deemed inadmissible.	Relevant to show notice that <i>π</i> is aware of reporting procedure	Resolved pursuant to Court's Order on Plaintiff's motion <i>in limine</i> regarding disciplinary action.
12	D	2012-01-12	AC Policy	Allegheny County ADHR Policy	Δ AC-JK_000321-000325					
13	Joint	2013 (estimate)	Robyn McCall	Screenshots of messages sent from Maj. McCall to Kengerski	Δ AC-JK_001815-001828					
14	Joint	2014	AC Record	ACJ Organizational Chart	Δ AC-JK_000040					
15	Joint	2014-09-21	AC Record	Kengerski Promotion: Sergeant to Captain	Δ AC-JK_000075					
16	Joint	2014-12-14	AC Record	McCall Promotion from Captain to Major	Δ AC-JK_002034					

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17	D	2015-03-13	Robyn McCall	Email chain between McCall and Kengerski re Taser	π 000353-000358			401, 403 relevance – reserve objection pending proffer and/or proper foundation at trial. 403 – This is cumulative. Propose just using 357-58 which includes the entire chain.	Relevant to show actual state of occurrences between McCall and π during time he is accusing her of “harassment” in his alleged protected report; π specifically refers to the emails in his alleged protected report that is central to this lawsuit and are part of defense	Objection is sustained.
18	Joint	2015-03-15	AC Policy	ACJ Policy #154, Code of Ethics/Conduct Required for ACJ Employees	π 000482 - 000484					

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
19A	D	2015-03-15	Kengerski	Report re Taser Incident	<i>π</i> 000359			401, 403 relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to show actual state of occurrences between McCall and <i>π</i> during time he is accusing her of “harassment” in his alleged protected report; <i>π</i> specifically refers to the emails and this incident in his alleged protected report that is central to this lawsuit and are part of defense	Objection is sustained.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
19B	D	2015-03-15	McCall	Email Re Report on Inspection Assignment	π 000360			401, 403 relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to show actual state of occurrences between McCall and π during time he is accusing her of “harassment” in his alleged protected report; π specifically refers to the emails and this incident in his alleged protected report that is central to this lawsuit and are part of defense	Objection is sustained.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
20A	D	2015-04-01	Robyn McCall; Kengerski; Others	Email Chain with McCall re Kengerski Office Assignment	π 000363			401,403-relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to show actual state of occurrences between McCall and π during time he is accusing her of “harassment” in his alleged protected report; π specifically refers to the emails and this incident in his alleged protected report that is central to this lawsuit and are part of defense	Objection is sustained.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
20B	D	2015-04-01	Robyn McCall; Kengerski; Others	Email Chain with McCall re: vacation scheduling	π 000364-000366			401,403- relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to show actual state of occurrences between McCall and π during time he is accusing her of “harassment” in his alleged protected report; π specifically refers to the emails and this incident in his alleged protected report that is central to this lawsuit and are part of defense	Objection is sustained.

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21	D	2015-04-22	Robyn McCall; Kengerski	Email chain between Kengerski and McCall re scheduling access	π 000367			401,403- relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to show actual state of occurrences between McCall and π during time he is accusing her of “harassment” in his alleged protected report; π specifically refers to the emails and this incident in his alleged protected report that is central to this lawsuit and are part of defense	Objection is sustained.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
22	D	2015-04-25	Robyn McCall; Robert Bytner	Email Chain between McCall and Bytner re Kengerski's vacation changes	<i>π</i> 000369-000370			801, 802 – hearsay 401,403- relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to show actual state of occurrences between McCall and <i>π</i> during time he is accusing her of “harassment” in his alleged protected report; <i>π</i> specifically refers to the emails and this incident in his alleged protected report that is central to this lawsuit and are part of defense; Non hearsay not being offered for the truth – the emails are specifically referred to and part of the alleged protected report <i>π</i> submitted	Objection is sustained.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
23	Joint	2015-04-27	Orlando Harper	Email to Kengerski req. a memo re. allegations against McCall	π 000371					
24	D	2015-04-27	Orlando Harper	Email from Harper to Kengerski, Suzio, re printing screenshots	π 000372					
25	Joint	2015-04-29	Kengerski	Memo to Warden Harper re. Major McCall	π 000373 - 000374					
26	Joint	2015-05-05	Robyn McCall	McCall Email re overdue Buddy Days	π 000377					
27	Joint	2015-05-14	Orlando Harper	Email between Harper and Kengerski re investigating filed complaint	π 000378					
28	Joint	2015-06-08	AC Record	McCall Personnel Form	π MSJ Ex. P9					
29	D	2015-07-01	Simon Wainwright	Notice of hearing to Kengerski re Buddy Days	Δ AC-JK_000386			401, 403-relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to establish Δ legitimate non-retaliatory reasons for π five-day suspension and goes to causation	Objection withdrawn by Plaintiff.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
30	D	2015-07-01	AC Record	Kengerski Buddy Day violations from personnel file	Δ AC-JK_000105-000119		Foundation will be laid at trial	801 – hearsay. Author/preparer is not identified. NO business record foundation laid. Even if business records, document contain handwriting from an unidentified individual who is not subject to cross examination. 401, 403. - not relevant. Documents are incomplete (pages are cut off).	Business Record contained in π's personnel file also offered for non-hearsay purpose of notice to County to support non-retaliatory business decision to suspend π for Buddy Day violation – goes to causation issue	Objection withdrawn by Plaintiff except as to authenticity. That objection is overruled subject to Defendant's laying a foundation at trial.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
32	P	2015-07-14	Kengerski	Incident Report re. Sgt. Coulter	π 000387			Yes 801, 805 401, 403 Self-serving statement document not produced by Δ ; Hearsay within hearsay Best Evidence Rule – “post” was never produced	Business record. Statements of Wainwright and Bytner are statements of a party opponent. Admissible to rebut a charge of recent fabrication. Statements reported by Kengerski are Admissible to establish the effect him and the fact that the ACJ was aware of these incidents.	Objection withdrawn by Plaintiff.
33	D	2015-07-14	Simon Wainwright	Letter detailing Kengerski's Buddy Day suspension	Δ AC-JK_000385			401, 403-relevance – reserve objection pending proffer and/or proper foundation at trial	Relevant to establish Δ legitimate non-retaliatory reasons for π five-day suspension and goes to causation	Objection withdrawn by Plaintiff.

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
34	D	2015-08-11	Orlando Harper	Email from Harper reminding all of ADHR Policy	π 000392					
35	Joint	2015-08-17	Orlando Harper; Kengerski	Email RE return to Sergeant	π 000395					
36	P	2015-08-18	Kengerski	Incident Report re Officer Tucker – Kengerski to Bytner	π 000396	Yes; County has disputed the authenticity of this document since the personnel board hearing; County does not have this record		Yes Hearsay 403; County was never in possession of this report and has disputed that it is a county record since the personnel board hearing; Self serving statement being used to establish truth	Business Record. Not being used to establish truth of contents, used to establish that P made the report.	Sustained. The report is not relevant and its probative value is substantially outweighed by the risk of unfair prejudice, waste, or confusion. Fed. R. Evid. 403.
39	Joint	2015-09-09	Unknown	Anonymous Letter	Δ AC-JK_001123					

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40	P	2015-09-09	Inspector William Palmer	Investigator's Report on Anonymous Letter	Δ AC-JK_001410-001412			Rel 401, 403	Relevant to establish Harper's knowledge of factions and likely retaliation against P.	Report is admissible. Overrule Defendant's 401, 403 objections.
41	P	2015-09-20	Kengerski	Redacted e-mail from Plaintiff to Jail Personnel	π MSJ Ex. P28			Obj, 801, 403 Confusing This is a blank email with only a subject line and no attachments or explanation	Not hearsay. Offered to show notice to jail administration. Relevant to show that jail administration was aware of P's complaints.	Admissible. Statement is not hearsay if offered to show Plaintiff noticed recipients. Fed. R. Evid 801(c).
42	Joint	2015-10-08	AC Record	PA 1000 Termination Report for Robert Bytner	Δ AC-JK_002028					

Ex. No.	P/D Joint	Date	Author	Description	Bates #	Obj. Auth.	Resp. Auth.	Obj. Admiss.	Resp. Admiss.	Court's Ruling
43	D	2015-11-01	AC Record	ACJ Captain Job Description	Δ AC-JK_000375-000376	Yes, Date unknown. Cannot establish when job description was in effect.	Will lay a foundation	401,403	Relevant to show captain's role within the jail; what is expected of the position; supports Δ legitimate non-retaliatory justifications for termination	Admissible. Overrule Plaintiff's 401, 403 objections.
44	Joint	2015-11-20	Kengerski	Incident Report re Officer Tucker – Kengerski to Administration	Δ AC-JK_000367					
45	D	2015-11-20	Kengerski	Acknowledgement of Receipt of ADHR Policy and Report Procedure	Δ AC-JK_000662					
46	D	2015-11-20	AC Record	Sexual Harassment Training Sign-in Sheet	Δ AC-JK_001405-001406					
47	D	2015-11-23	Orlando Harper	Harper email to Nichole Nagle encl. Tucker sexual harassment complaint	Δ AC-JK_000421					
48	Joint	2015-11-23	Alyssia Tucker	Incident Report re Sergeant Brown	Δ AC-JK_000363 – 000364					
49	Joint	Undated; Incident occurred 2015-11-23	Jason Batykefer	Incident Report re Tucker, Brown.	Δ AC-JK_000371					

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50	Joint	2015-11-24	Alyssia Tucker	Incident Report re Kengerski asking Tucker to say she spoke with Bytner	Δ AC-JK_000366					
51	Joint	2015-11-24	Andrew Coulter	Incident Report re Kengerski asking Brown, Tucker, to say they spoke with Bytner	Δ AC-JK_000365					
52	Joint	2015-11-24	Michael Brown	Incident Report re Kengerski asking Brown to not report conversation	Δ AC-JK_000370					
53	Joint Assume P agrees to use redated	2015-11-30	Orlando Harper	Termination Letter	Δ AC-JK_000915					
54	D	2015-11-30	AC Record	PA 1000 Termination Report of Kengerski	Δ AC-JK_000073					
55	Joint	2015-12-08	Orlando Harper	Post-Termination Hearing Memo	Δ AC-JK_000303					
56	Joint	2015-12-14	Orlando Harper	Harper email to Samuel Pastor req. footage	Δ AC-JK_001790					

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57	D	various	AC Record	KRONOS timesheets	Δ AC-JK_001791-001794	Yes	Will lay foundation	801 – Hearsay – 401, 403 – relevance as to D's additional pages.	Business record being offered to show Δ notice and what was relied on in legitimate non-retaliatory reasons for term	Objection is overruled subject to Defendant's laying a foundation at trial.
58	P	2016-01-12	Ct. Reporter	Unemploy. Comp. Transcript	π 000722-752			Obj. – Hearsay these should have been designated excerpts to be filed with pretrial statement	Non-hearsay - Statement of a party opponent. Relevant to show pretext.	Overrule Defendant's objection. Admissible as statements of party opponent or for impeachment. Fed. R. Evid. 801(d)(1), (2).
59	P	2016-03-14	Ct. Reporter	π Personnel Hearing Transcript	π 000568-721			Obj. – Hearsay these should have been designated excerpts to be filed with pretrial statement	Non-hearsay - Statement of a party opponent. Relevant to show pretext.	Overrule Defendant's objection. Admissible as statements of party opponent or for impeachment. Fed. R. Evid. 801(d)(1), (2).
61	D	2019-01-23	Kengerski	Plaintiff's Responses to Defendant's Interrogatories and Request for Production of Documents	Unnumbered					

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62	D	2019-02-07	Various	Kengerski Deposition & exhibits A, C, E, I, J, L, P, Q, R, S, T, U, V, W, Y, z, CC, FF, GG, HH	Various			To the extent that D wants to use any of these exhibits, they should be listed separately so that P can object to their admissibility and/or relevance separately individually.	These are exhibits that coordinate depo designations in pre-trial: it would only come in at time particular designation was read	Parties are to confer as part of deposition designation process and resolve disputes, or else raise disputes before trial.
63	D	2019-03-21	Ct. Reporter	Video Deposition of Simon Wainwright & Exhibits 3, 4, 6, 7, 13, 14	Unnumbered			To the extent that D wants to use any of these exhibits, they should be listed separately so that P can object to their admissibility and/or relevance individually.	These are exhibits that coordinate depo designations in pre-trial: it would only come in at time particular designation was read	Parties are to confer as part of deposition designation process and resolve disputes, or else raise disputes before trial.
64	P	2018 2019 2020 2021	Kengerski	P W-2's	π 000562-567					

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65	P	2019-07-25 Unknown	Carl Prine(?)	Voicemail from Tribune Review Reporter	π 000558	Yes		Yes 401, 403 802; Hearsay of someone available; Not relevant; speculation – asking to infer leaking of information on behalf of D	Relevant to show that information regarding P's discipline was leaked to the press immediately after his termination.	Resolved pursuant to the Court's Order on Defendant's motion <i>in limine</i> #5, primarily on basis of Rule 403.
66	P	2019-07-25	Heather McDonald	Transcript of Voicemail from Tribune Review Reporter, π 000558	π MSJ Ex. P39a	Yes		Yes 401, 403 802; Hearsay of someone available; Not relevant; speculation – asking to infer leaking of information on behalf of D		Resolved pursuant to the Court's Order on Defendant's motion <i>in limine</i> #5, primarily on basis of Rule 403.

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67	P	2022	AC Website	List of County Pay	None	Yes Not produced/ requested in discovery Unknown if accurate Unfair surprise		Yes Hearsay; 403 P Has not produced comparative info. only produced w-2 info., and only from 2016-21. Difference between gross wages and w-2 information not reflected in this exhibit – P is not prejudiced already included comparator information in original pre-trial	I don't understand the objection.	Objection is overruled without prejudice.